

Magers Deposition Transcript Excerpts

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) Case
) No. 1:23-cv-00853-DAE
GREG ABBOTT, in his)
capacity as GOVERNOR OF)
THE STATE OF TEXAS, and)
THE STATE OF TEXAS,)
)
Defendants.)

ORAL DEPOSITION OF
CHRISTINE MARIE MAGERS
Tuesday, July 9, 2024

ORAL DEPOSITION OF CHRISTINE MARIE MAGERS,
produced as a witness at the instance of the Plaintiff,
United States of America, and duly sworn, was taken in
the above-styled and numbered cause on the 9th of
July, 2024, from 9:43 a.m. to 6:14 p.m., before Sharon
Ross, Certified Shorthand Reporter in and for the State
of Texas, reported by computerized stenotype machine, at
the US Attorney's Office for the Western District of
Texas, 903 San Jacinto Boulevard, Suite 334, Austin,
Texas 78701, pursuant to the Federal Rules of Civil
Procedure and/or any provisions stated on the record or
attached hereto.

Reported by:
SHARON ROSS, Texas CSR #1961,
Hawaii CSR #432, RMR, CRR, CRC
Realtime Systems Administrator
Job No. CS6789938

1 analysis?

2 A. Correct.

3 Q. So does that entail the impacts of a river's
4 navigability?

5 So I'm just trying to figure out more or
6 less like what exactly you're advising a project
7 proponent about a river's navigable capacity.

8 A. So usually I work with the applicant or client
9 to identify potentially navigable waters, potentially
10 jurisdictional waters and wetlands, and prepare a
11 wetland delineation report and jurisdictional
12 determination application.

13 Then I work with the Corps of Engineers to
14 provide data for them to be able to make a final
15 determination that also gets verified by the EPA.

16 Q. And why is that?

17 A. Again, that is their jurisdiction.

18 Q. Okay. Were you asked to make a jurisdictional
19 determination in this case?

20 A. No.

21 Q. Did you make a jurisdictional determination in
22 this case?

23 A. No.

24 Q. Under the Corps' national economic
25 determination procedures, do you know who is responsible

1 for determining a project's costs outweigh its benefits?

2 A. I believe it's the Corps of Engineers,
3 whichever is the sponsor district for a project.

4 Q. So somebody within the --

5 A. Within the agency, yes.

6 Q. -- agency. What is your background in dam and
7 reservoir operations?

8 A. I'm not an expert in the operations of dams or
9 reservoirs.

10 Q. Are you an engineer?

11 A. No. I've worked with a lot of dam engineers,
12 though.

13 Q. D-A-M engineers?

14 A. I had to slip that in.

15 Q. What is your background, if any, in the
16 operation of the Amistad and Falcon International
17 Reservoirs?

18 A. I'm not an expert in the operation of those.

19 Q. Do you have any background, though, in the
20 operation of those dams --

21 A. No.

22 Q. -- or reservoirs?

23 A. No, no.

24 Q. How, if at all, does your training as a
25 certified wildlife biologist offer insight into the

1 operation of Amistad and Falcon International Dams and
2 Reservoirs?

3 A. They are unrelated.

4 Q. Do you have any reason to believe that
5 Mr. Cortez does not have expertise in the operation of
6 Amistad and Falcon International Dams and Reservoirs?

7 A. Yeah. I stated in my report my opinion that he
8 did say that he was a qualified hydrologist and, based
9 on the information provided, was an expert in the
10 operations.

11 Well, no, I have it stated in my report.
12 I'll look at that. Yes. Based on the expert report
13 provided by Mr. Cortez, he's a qualified expert on the
14 US operation of the dams and reservoirs and hydrology.

15 Q. What is your background in the flow regime in
16 the area downstream of Amistad International Dam?

17 A. I'm not a hydrologist. That's not my
18 expertise.

19 Q. Do you have any background in the flow regime
20 in the area downstream of Amistad International Dam?

21 A. I have experience describing different sections
22 of the Rio Grande for projects but not assessing the
23 flow regime in general.

24 Q. And how, if at all, does your training as a
25 certified wildlife biologist offer insight into the flow

1 regime?

2 MR. STONE: Objection, form.

3 A. The only applicability would be how a change in
4 flow would affect a protected species habitat or
5 directly impact a species.

6 Q. (BY MS. PEREZ) Do you have any reason to
7 believe that Mr. Cortez did not -- does not have
8 expertise in the flow regime in the area downstream of
9 Amistad International Dam?

10 A. No.

11 Q. What is your background in current navigational
12 uses of the Rio Grande?

13 A. My background is based on the information
14 provided in the expert reports, my site visits and
15 references cited in my report.

16 Q. So other than your involvement in this
17 litigation, are you saying you do not have any
18 background or experience in current navigational uses of
19 the Rio Grande?

20 MR. STONE: Objection, form.

21 A. No, I have experience.

22 Q. (BY MS. PEREZ) What experience?

23 A. Personal experience in boats, fishing boats,
24 and observing the use of kayaks and boats in the river
25 for the past 25 years.

1 Q. Was it fishing and kayaking in the same segment
2 of the Rio Grande?

3 A. No, it was actually a little further up, some
4 in Amistad and then also been to Devils River and Pecos
5 and downstream.

6 So as it's effective -- it was when I was
7 younger and 16 with a -- totally paying attention to
8 what segment we were in. So....

9 Q. So how, if at all, does your training as a
10 certified wildlife biologist offer insight into the
11 current navigational uses of the Rio Grande?

12 MR. STONE: Objection, form.

13 A. Those are unrelated.

14 THE REPORTER: I'm sorry?

15 THE WITNESS: Those are unrelated.

16 Q. (BY MS. PEREZ) Do you have any reason to
17 believe that Mr. Cortez does not have expertise in
18 current navigational uses of the Rio Grande?

19 A. I don't believe that was his stated expertise
20 nor did I -- huh -- didn't look at that.

21 I'd have to review again but I -- he was
22 a -- stated as an expert on operation of Amistad and
23 Falcon dams and reservoirs and flow regime areas
24 downstairs -- downstream.

25 Q. So if you can go to Page 2 of your report which

1 is Exhibit 1 --

2 A. Uh-huh.

3 Q. -- and the first state -- sentence in the first
4 paragraph is "Mr. Cortez is stated to be an expert
5 on" -- and you can skip down --

6 A. Yeah, it does have -- yeah, he did list that as
7 one of them.

8 Q. -- to "current navigational uses of the Rio
9 Grande" --

10 A. Uh-huh.

11 Q. -- "within the responsibility of the
12 commission."

13 A. Yes.

14 Q. Do you have any reason to believe that
15 Mr. Cortez does not have expertise in current
16 navigational uses of the Rio Grande?

17 A. Based on information he provided, it seemed
18 like his expertise was contradictory. Some of his
19 statements supported navigation, and some did not
20 through different segments of the re -- this section.

21 Q. So based on contradictions that you found in
22 Mr. Cortez' report, you have reason to believe that
23 Mr. Cortez did not have expertise in current
24 navigational uses of the Rio Grande; is that correct?

25 A. Correct.

1 A. No, that's not a thing.

2 Q. When did you start as an expert in this case --
3 start your work?

4 A. End of April so -- I don't remember the exact
5 date but mid to end of April.

6 Q. And when did you come to the conclusion that
7 the cost of the hypothetical projects would outweigh the
8 benefits of improving navigation?

9 A. And so maybe a few weeks into the process of
10 seeing the magnitude of impacts to the resources.

11 Q. Was that sometime in May?

12 A. Yes.

13 Q. First week or last week of May?

14 A. We'll go with mid-May.

15 Q. What portion -- so the -- going back to
16 Exhibit 1, the report that you coauthored with Sandi
17 Hart --

18 A. Uh-huh.

19 Q. -- what portion of the report did you author?

20 A. That -- the specific sections that I authored
21 independently are listed in -- was it section 1 -- 11.0.

22 But I did a quality review of all sections
23 of the document, so read through all of it; but
24 specifically I prepared the figures and wrote the
25 summary of expert opinions and reviewing the four USA

1 expert reports as well as just providing regulatory
2 guidance of -- as we developed the project and handled
3 our approach to the project.

4 Q. What portion of the report did Ms. Hart author?

5 A. She authored the naviga -- I want the specific
6 sections here so I don't say it wrong.

7 She was quality control for the cultural
8 resources section, Appendix D of the report. She
9 reviewed the summary of expert opinions that I wrote
10 relating review and opinion of the Cortez, MacAllister,
11 Timmel, and Johnson expert reports, added to the
12 navigable in fact and navigable by statute sections and
13 also provided regulatory guidance throughout the
14 document development.

15 Q. Okay. So specifically who drafted section 1,
16 the summary of background --

17 A. Me.

18 Q. -- qualifications?

19 A. That was -- so I did the Executive Summary, the
20 Summary of Background/Qualifications. I wrote my
21 paragraph in 1.0, the one relative to mine; and she
22 wrote hers.

23 Q. And who drafted section 2, Summary of Expert
24 Opinions?

25 A. I did.

1 Q. Who drafted the -- section 3, review and
2 opinion of Cortez, MacAllister and Timmel and Johnson
3 expert reports?

4 A. I did.

5 Q. Were you asked to critique the United States
6 expert reports by the State of Texas attorneys?

7 A. I was -- yes, I was asked to review and give an
8 opinion on if their stated expertise was supported by
9 the information in their report.

10 Q. So in your review of Mis -- Dr. Johnson,
11 Mr. Johnson -- I'm going to say the Johnson report --

12 A. Uh-huh.

13 Q. -- you mention that -- is it correct that you
14 mention you needed NEPA documentation for historic
15 navigation?

16 A. I noted he didn't include the assessment of
17 environmental impacts for navigation.

18 Q. For navigation predating NEPA's enactment?

19 A. No. It was -- he made the -- so I'll say that
20 he made a statement of -- saying that the cost for such
21 improvements was about 25,760 per year -- that was
22 from -- this is on Page 5 of my report -- and then
23 projecting those dollar amounts to -- just using
24 inflation, to project that to be worth 18 million in
25 2024, seeing it's well within the range of

1 appropriations regularly made.

2 That cost did not appear to include the
3 cost of doing a NEPA analysis, engineering and design,
4 public involvement.

5 Based on my experience with other projects,
6 such as the Brazos Island Harbor project that had a much
7 greater cost for a relatively much smaller project.

8 Q. Does your report include the cost of NEPA
9 documentation for the hypothetical projects?

10 A. No. There's no way it could because the
11 specific need and purpose and identified specific
12 projects with impacts was not provided or identified.

13 Q. So you mention in your report -- Page 3 of your
14 report that flow data can be collected by non-watercraft
15 means, such as additional gauges that would have fewer
16 environmental impacts; is that correct?

17 A. Yes.

18 Q. Did you analyze the environmental impacts of
19 any existing or proposed gauges in the Rio Grande?

20 A. No.

21 Q. Why not?

22 A. Because this was only presented as an
23 alternative that should be looked at, that impacts from
24 it should be considered. If the need of the project is
25 to provide navigation for the collection of the data,